

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ST. PAUL FIRE AND MARINE
INSURANCE COMPANY,

Plaintiff,

v.

PIERCE MANUFACTURING INC.,

Defendant.

CASE NO. C15-5705-RBL

ORDER RE MONIES OWED

DKT. #42

THIS MATTER is before the Court on Plaintiffs St. Paul Fire and Marine Insurance Company and Cities Insurance Association of Washington's Motion for Summary Judgment [Dkt. #42]. The Insurance Companies bring their motion to support the only remaining issue in the case: whether Defendant Pierce Manufacturing owes them \$349, 944.61 in restitution for costs and fees they incurred defending against claims that a fire truck built by Pierce suffered from design and manufacturing defects.

In an earlier motion, the Insurance Companies argued Pierce breached its duty to defend their insured, East Pierce Fire & Rescue (a fire department), against claims brought by its employee, Roorda. The Insurance Companies sought \$362,815.11 in total damages, claiming Cities paid the first \$100,000 in defense costs, and St. Paul paid \$253,196.11. (They never

1 explained the source of the additional \$9,619.00 they were requesting.) The Court determined
2 Pierce had to indemnify and defend the Fire Department against Roorda's claims regarding the
3 trucks' design and manufacture only—not also against his claims that the Fire Department had
4 acted negligently. *See* Dkt. #41 (Order Granting Insurance Companies' Motion for Summary
5 Judgment on Liability but Reserving Judgment on the Amount of Damages Owed). The Court
6 concluded Pierce breached this duty, but did not award damages because the Insurance
7 Companies had not provided an itemized list of how they incurred their costs and fees in the
8 underlying allegation, such that the Court could not deduct the costs and fees they spent
9 defending against the negligence claims.

10 The Insurance Companies now request \$349, 944.61 for defense of the design and
11 manufacturing defect claims.¹ (They claim only \$12,870.50 was spent defending against the
12 negligence and other claims.) Pierce argues the Insurance Companies grossly exaggerate the
13 amount owed by (1) failing to consider whether they would have incurred certain costs and fees
14 even if there were no products liability claim and by (2) including costs and fees incurred before
15 the Insurance Companies tendered defense of the case and those incurred in bringing this case.
16 Pierce argues the Insurance Companies only spent \$172,674.99 defending against Roorda's
17 products liability claims, and they have provided no evidence that they even paid this bill. The
18 Insurance Companies reply they paid for all defense costs in the underlying lawsuit, and it is the
19 Court's prerogative to determine how much of a "haircut" to apply to their fee request.

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22 ¹ Pierce also asks the Court to strike the Insurance Companies' motion as untimely,
23 because they filed it after the dispositive motions deadline. After deciding liability, the Court
24 requested additional information to calculate the Insurance Companies' damages award. It is
specious to suggest the Court cannot extend its own deadlines. Pierce's request to strike is
DENIED.

1 When evaluating the number of hours reasonably expended, a court must generally
2 segregate time spent on successful claims from hours spent on unsuccessful claims, covered
3 claims from un-covered claims, duplicated effort, and productive time from unproductive time.
4 *See Supervalu Holdings v. Morris*, No. C09-5351BHS, 2011 U.S. Dist. LEXIS 20351, at *9
5 (W.D. Wash. Feb. 17, 2011) (citing *Hume v. American Disposal Co.*, 124 Wn. 2d 656, 673, 880
6 P.2d 988 (1994)).

7 The Fire Department tendered defense to Pierce on February 9, 2012. The trial court
8 granted the Fire Department's motion to dismiss Roorda's negligence claims on April 5, 2013,
9 leaving only his products liability claims. The case was resolved on June 26, 2013.

10 Between February 2012 and April 2013, the Fire Department spent approximately
11 \$120,000. Approximately 1/3 of this amount was spent defending against Roorda's negligence
12 claims, and approximately 2/3 was spent defending against his products liability claims. The
13 Insurance Companies can recover \$80,000 for the costs and expenses incurred regarding the
14 products liability claims. Between April 5 and June 26, the Fire Department incurred
15 approximately \$170,000—an amount the Insurance Companies may recover entirely because it is
16 solely attributable to Roorda's products liability claims. The Insurance Companies may not
17 recover the costs and expenses they incurred after resolution of the underlying case. Pierce owes

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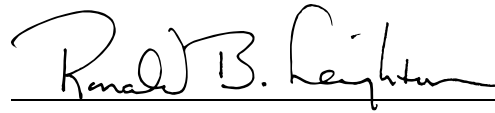
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1 the Insurance Companies \$250,000 in reimbursement for the fees and costs they incurred
2 defending the Fire Department against Roorda's products liability claims.

3 IT IS SO ORDERED.

4 Dated this 3rd day of February, 2017.

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7 Ronald B. Leighton
8 United States District Judge
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